

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Kyle Fellers, Anthony Foote,
Nicole Foote, and Eldon Rash,

Plaintiffs,

v.

Marcy Kelley, Michael Desilets, Matt Fisk,
Bow School District, Philip Lamy & Steve
Rossetti,

Defendants.

Case No. 1:24-cv-311-SM-AJ

**DEFENDANT BOW SCHOOL DISTRICT'S MOTION IN LIMINE
TO TAKE JUDICIAL NOTICE OF FINDINGS IN *TIRRELL v. EDELBLUT***

NOW COMES Defendant Bow School District (“District”), through its attorneys Cullen Collimore Shirley PLLC, and respectfully submits this Motion *in Limine* to have the Court take judicial notice of findings made in *Tirrell v. Edelblut*, 2024 DNH 073 (D.N.H. Sept. 10, 2024).

In support of this Motion, the District states as follows:

1. The Court will be asked to decide at the upcoming hearing whether it was reasonable for the District to conclude that the “XX” wristbands and “Protect Women Sports for Female Athletes” signs Plaintiffs displayed on the sideline of the girls’ varsity soccer game or in school parking lot on September 17, 2024, demeaned transgender and gender non-conforming students.

2. To decide this and related questions, the Court should take judicial notice of the findings and rulings made in *Tirrell* by another court in this federal district. The *Tirrell* decision is relevant because the plaintiff, Parker Tirrell, played for the Plymouth Regional High School girls’ varsity soccer team at the September 17 game hosted by Bow High School, and it was her

presence on the playing field that day which prompted Plaintiffs' protests and, in turn, the District's response.

3. Specifically, the Court should take judicial notice of the following findings in

Tirrell:

- a. The phrase "gender identity" is an accepted medical term for a person's innate sense of gender. 2024 DNH 073, at *2.
- b. Everyone has a gender identity, and it may or may not align with their biological sex or anatomy. *Id.* at *2-3.
- c. A transgender girl is a person who was born with a male anatomy but whose gender identity is female. *Id.* at *3.
- d. Transgender people experience a medical condition known as gender dysphoria. *Id.*
- e. The condition is recognized in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders ("DSM-V"). *Id.*
- f. Gender dysphoria results from a lack of alignment between one's birth sex and gender identity. 2024 DNH 073, at *3.
- g. Gender dysphoria is highly treatable, but if left untreated, it may result in anxiety or depression, eating disorders, substance abuse, and even suicide. *Id.*
- h. Under prevailing standards, treatment for gender dysphoria generally involves some combination of (1) a social transition in which the person adopts a new name, pronouns, appearance, and clothing, and (2) medical or surgical interventions that allow the patient to live more consistently with their gender identity. *Id.*

- i. Social acceptance of one's gender identity is critical to the successful treatment of gender dysphoria. 2024 DNH 073, *3.
- j. Parker Tirrell is a fifteen-year-old transgender girl and sophomore at Plymouth Regional High School. *Id.* at *4.
- k. Parker Tirrell has been diagnosed with gender dysphoria. *Id.* at *5.
- l. Parker's treatment for gender dysphoria is to socially transition and live as a girl. *Id.*
- m. This includes participating in girls' sports and using girls' facilities at school. *Id.*
- n. In ninth grade, Parker played on the girls' soccer team at Plymouth Regional High School. 2024 DNH 073, at *6.
- o. Most of Parker's friends are her teammates, and they have given Parker an important source of acceptance, belonging, and emotional support. *Id.*
- p. Playing on a boys' soccer team is not a realistic option for Parker. *Id.*
- q. Parker's health care providers have prescribed treatment requiring her to live and participate in the world as a girl. *Id.*
- r. Playing on a boys' soccer team would likely have adverse impacts on Parker's mental health and would exacerbate symptoms of gender dysphoria. *Id.*
- s. On July 19, 2024, New Hampshire enacted House Bill 1205 [hereinafter "HB 1205" or "the Act"]. 2024 DNH 073, at *8 (citing 2024 N.H. Laws Ch. 228 and RSA 193:41-:42).
- t. The Act requires for public schools or private schools whose students or teams compete against a public school, that "[a]thletic teams or sports designated for females, women, or girls, shall not be open to students of the male sex." *Id.*

u. On September 10, 2024, the New Hampshire federal district court granted Parker Tirrell a preliminary injunction against the Commissioner of the New Hampshire Department of Education and other state actors from enforcing HB 1205 because Parker Tirrell is likely to show that the Act violates her constitutional right to equal protection under the law. 2024 DNH 073, at *13-36.

4. The findings of the New Hampshire district court in *Tirrell* are relevant and material to many of the issues to be addressed at the upcoming hearing in this case because, as the District's witnesses will testify, the District's actions on September 17 were animated in substantial part by a belief that Parker Tirrell had a right to be left alone to play the soccer game.

5. Under Fed. R. Evid. 201(b), the Court may judicially notice facts that are not subject to reasonable dispute because they can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned. The *Tirrell* court's findings meet this standard because they are drawn from undisputed facts presented in support of Parker Tirrell's request for preliminary injunctive relief, or they are the court's legal conclusions.

6. Because the factual and legal basis for the relief requested is contained in the body of this Motion, no memorandum of law is filed in support. LR 7.1(a)(2).

7. The District sought the concurrence of Plaintiffs to the relief requested by this Motion. Plaintiffs do not assent. LR 7.1(c).

WHEREFORE, the District respectfully requests this Honorable Court:

- A. Take judicial notice of the findings in *Tirrell*, as described in this Motion, when ruling on the issues to be addressed at the upcoming hearing; and
- B. Grant such other and further relief as this Court deems just and equitable.

Respectfully submitted,

BOW SCHOOL DISTRICT

By its attorneys,

CULLEN COLLIMORE SHIRLEY PLLC

Dated: November 1, 2024

/s/ Brian J.S. Cullen

Brian J.S. Cullen, NH Bar 11265
Jonathan M. Shirley, NH Bar 16494
37 Technology Way, Suite 3W2
Nashua, NH 03060
(603) 881-5500
bcullen@cullencollimore.com
jshirley@cullencollimore.com

CERTIFICATE OF SERVICE

I certify that a copy of this filing was served via the Court's ECF filing system upon counsel of record.

Dated: November 1, 2024

/s/ Brian J.S. Cullen

Brian J.S. Cullen